

SERVICE DATE – LATE RELEASE JULY 3, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36185

HAINESPORT INDUSTRIAL RAILROAD, LLC—LEASE AND OPERATION EXEMPTION
—HAINESPORT SECONDARY RAILROAD, LLC

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ This decision allows Hainesport Industrial Railroad, LLC, a Class III rail carrier, to lease and operate a rail line located on a parcel of land in Hainesport, N.J., owned by its corporate affiliate, Hainesport Secondary Railroad, LLC. The decision also waives the 60-day advance notice requirements to employees, because no employees would be adversely affected.

Decided: July 3, 2018

On April 30, 2018, Hainesport Industrial Railroad, LLC (Hainesport Industrial), filed a request for a waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e). The waiver request is related to an April 25, 2018 verified notice of exemption Hainesport Industrial filed under 49 C.F.R. § 1150.41 to lease and operate a rail line located in Hainesport, N.J., owned by its corporate affiliate, Hainesport Secondary Railroad, LLC (Hainesport Secondary). Hainesport Industrial certified that its projected annual revenues will exceed \$5 million. Accordingly, unless waived, § 1150.42(e) would require Hainesport Industrial, at least 60 days before the notice of exemption can become effective, to serve notice of the transaction on the national offices of the labor unions with employees on the affected line, post a copy of the notice at the workplace of the employees on the affected line, and certify to the Board that it has done so. No opposition to this waiver request has been filed.

BACKGROUND

On April 25, 2018, Hainesport Industrial filed a verified notice of exemption under 49 C.F.R. § 1150.41 for authority to lease and operate “a line of railroad including a yard, grounds, and improvements thereon” (the Line) owned by its corporate affiliate, Hainesport

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

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Secondary.² (Verified Notice 2.) The Line is located on Block 104, Lot 11 on the Tax Map of the Township of Hainesport, N.J.³ Hainesport Industrial and Hainesport Secondary entered into a 10-year lease agreement on January 1, 2016, but state that they did not initially realize that it required Board approval. (Id. 5-6.) The Verified Notice states that Hainesport Industrial is currently and will continue to be the operator of the property, but that Hainesport Secondary provides haulage services for Hainesport Industrial. (Id. 3-4.) As described therein, Hainesport Secondary handles traffic “moving between” the Line and the Conrail interchange that traverses a connecting segment of rail line owned by Hainesport Secondary. (Id. 4.)

In a concurrent filing referenced in the April 25 cover letter in this docket, Hainesport Transportation Group (HTG), a corporate parent of Hainesport Industrial and Hainesport Secondary, submitted a verified notice of exemption under 49 C.F.R. § 1180.2(d)(3) involving the insertion of a newly formed noncarrier holding company between Hainesport Industrial and Hainesport Secondary, and their individual owners. HTG’s verified notice states that Hainesport Secondary provides common carrier operations “over the leased property connecting with the Conrail Shared Assets Organization,” and that there will be no changes in operations or service levels. (Verified Notice, Hainesport Transp. Grp.—Corp. Family Transaction Exemption, FD 36184, filed April 25, 2018, at 4.)⁴

In a petition filed April 30, 2018, Hainesport Industrial requests waiver of the 60-day labor notice requirements of 49 C.F.R. § 1150.42(e). According to the petition, Hainesport Secondary is “the entity that is actually performing rail operations and employing personnel” on the Line and “Hainesport Industrial does not have any employees and therefore no employees

² Hainesport Industrial acquired and initiated common carrier rail service on the Line, along with a connecting segment of track located on Block 104 known as the East Line, in 2005. See Hainesport Indus. R.R.—Acquis. & Operation Exemption—Hainesport Indus. Park R.R., FD 34695 (STB served May 18, 2005). Hainesport Industrial transferred the East Line to a newly formed corporate affiliate, Hainesport Secondary, in 2013. See Hainesport Indus. R.R.—Corp. Family Transaction, FD 35760 (STB served Sept. 11, 2013). It conveyed the property over which the present Line runs to Hainesport Secondary, as nominee for Hainesport Industrial, in April 2015. (Verified Notice 4-5.)

³ The Verified Notice states that there are no milepost designations associated with the Line. (Id. 6-7.)

⁴ HTG concurrently moved to dismiss the § 1180.2(d)(3) exemption notice on the basis that the transaction in question did not require agency approval, and dismissal has been granted. Hainesport Transp. Grp.—Corp. Family Transaction Exemption, FD 36184 (STB served May 24, 2018). As described in the motion to dismiss, “Hainesport Secondary owns a piece of property which Hainesport Industrial leases from it and over which Hainesport Secondary provides common carrier railroad service.” (Id. 2.)

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would be affected by this transaction.” (Waiver Request 1, Hainesport Indus. R.R.—Lease & Operation Exemption, FD 36185.)

Hainesport Industrial’s lease and operation exemption under § 1150.41 was served and published in the Federal Register on May 11, 2018 (83 Fed. Reg. 22,111).⁵ The published notice announced that the Board would establish the effective date of the exemption in the decision on the waiver request.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail employees on the affected line are given sufficient notice of the transaction before consummation. The Board takes seriously the notice requirements. However, based on the waiver request, the further record in the concurrently filed pleadings referenced in the April 25 cover letter in this docket, and the absence of opposition to either the waiver request or the transaction that is the subject of Hainesport Industrial’s Verified Notice, it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case. Moreover, a notice of the transaction has been provided since its May 11, 2018 Federal Register publication.⁶

Taken together, these pleadings indicate that no employees would be adversely affected by a waiver of the 60-day notice requirements here. The lease and haulage operations described in the Verified Notice have been in place for more than two years; Hainesport Industrial has no employees; and Hainesport Secondary—the entity that performs the actual rail operations and employs personnel on the Line—will continue to provide service over the Line without any change in operations or service levels. Because this collective record indicates that no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request.⁷

⁵ But for the labor notice requirements, the exemption would have become effective on May 25, 2018, 30 days after Hainesport Industrial’s Verified Notice was filed.

⁶ The Board admonishes counsel in this case for not using greater precision in the operative pleadings to describe the proposed transaction and its impact on employees on the affected Line. In particular, counsel is admonished to include all information pertinent to the exemption or waiver request in the operative pleading to avoid the need for the Board to review and reference multiple filings, and to ensure that requests for waiver of the notice requirements of 49 C.F.R. § 1150.42(e) explicitly address all employees on the affected line(s).

⁷ See, e.g., La. S. R.R.—Lease Exemption Containing Interchange Commitment—Kan. City S. Ry., FD 35983 (STB served Feb. 18, 2016), slip op. at 2; Ala. S. R.R.—Lease & Operation Exemption Including Interchange Commitment—Kan. City S. Ry., FD 35889 (STB served Jan. 13, 2015), slip op. at 2 (granting waiver requests where one party to the transaction

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The exemption authority to lease and operate the Line is effective as of the service date of this decision.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. Applicants' request for waiver is granted, and the exemption authority to lease and operate the Line is effective as of the service date of this decision.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.

had no employees working on the affected line and other party would continue to provide the same service and maintenance it had provided in the past).